Supreme Court, U.S.
FILED

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No. _____

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

MAHINDER S. UBEROI,
Petitioner,

v.

UNIVERSITY OF COLORADO, WILLIAM McINERNY, JOE ROY, GARY ARAI, JOHN HOLLOWAY and RICHARD THARP,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO COLORADO COURT OF APPEALS

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33 pp

QUESTIONS PRESENTED

1. May Colorado Court of Appeals refuse to follow latest intervening ruling of U.S. Supreme Court in *Hafer* that officials sued in their individual capacities *are* "persons" under 42 U.S.C. §1983 and conduct appellate review of summary judgment as such which it miscalled dismissal of civil rights claims and affirmed the dismissal because of earlier intervening ruling of U.S. Supreme Court in *Will* that persons acting in their official capacities *are not* "persons" under §1983 which deprived trial court of subject matter jurisdiction?

2. In proceedings to assess costs against petitioner, may state trial court refuse to consider petitioner's motions to discipline respondents which documented that they repeatedly filed fraudulent affidavits and garnished his wages to recover fictitious costs and order them not to respond to the motions because they were filed *pro se*?

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1993

MAHINDER S. UBEROI, Petitioner,

v.

UNIVERSITY OF COLORADO, WILLIAM McINERNY, JOE ROY, GARY ARAI, JOHN HOLLOWAY and RICHARD THARP, Respondents.

Petition for Writ of Certiorari to Colorado Court of Appeals

The petitioner, Mahinder S. Uberoi, respectfully, prays that a writ of certiorari issue to review the judgment and opinion of Colorado Court of Appeals entered on May 27, 1993, rehearing denied on July 8, 1993. Colorado Supreme Court denied certiorari on December 29, 1993.

OPINIONS BELOW

The opinion of Colorado Court of Appeals and the decisions of District Court of Boulder County, Colorado, entered on February 29, 1991 and January 29, 1992, have not been reported. They are reprinted in the appendix hereto.

JURISDICTION

The jurisdiction of this court is invoked under 28 U.S.C. §1257(a).

STATEMENT OF THE CASE

Parties

Petitioner is a male of Asian Indian origin, U.S. citizen, distinguished tenured professor and three-term past chairman of Department of Aerospace Engineering at University of Colorado, see *Who's Who in America* and *Who's Who in the World*, current editions.

Petitioner is not an attorney. He has appeared *pro se* at all times.

Respondent University of Colorado is a local governing body of State of Colorado. Individual respondents are agents, officials and police officers of the University.

Outline of Previous Relevant Litigation

For details, see *Uberoi v. University of Colorado, et al.*, U.S. Supreme Court, No. 91-561.

Colorado Supreme Court's reinstatements of civil rights claims

President of University of Colorado sent to petitioner and all other chairmen and deans legal opinion of the University counsel that the University's records come under Colorado Open Records Act. Petitioner requested inspection of specific records and a clerk and University police unlawfully assaulted and battered him. He sued them. Trial court dismissed common law claims for his failure to give proper notice under Colorado Governmental Immunity Act and dismissed civil rights claims because the University is not a "person" under 42 U.S.C. §1983. *Uberoi v. University of Colorado*, 713 P.2d 894 (Colo. 1986) affirmed dismissal of state claims and reinstated federal claims. The University is sufficiently financially independent of the state to be considered a local governing body. *Monell v. Dept. of Social Services of City of New York*, 436 U.S. 658 (1978). And all officials are sued in their individual capacities.

Summary judgment

On remand trial court denied petitioner's motion for summary judgment and granted respondents' motion for summary judgment. Petitioner appealed.

Court of Appeals miscalled summary judgment as dismissal and affirmed the dismissal citing intervening decision of U.S. Supreme Court in Will

> On remand, the trial court, on different ground, again *dismissed* the complaint. . . . While this appeal was pending [and briefs were closed] . . . *Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989) [held] that states . . . and state official acting in their official capacity are not "persons" within the meaning of 42 U.S.C. §1983. . . . Accordingly although the trial court provided different reasons for its second *dismissal* of the complaint, we affirm the *dismissal* on the ground that it lacked subject matter jurisdiction. [Court of Appeals' opinion. Emphasis Added. A16]

The court affirmed trial court's award of costs and attorney fees to respondents because petitioner's claims are frivolous. It made the conclusory statement that appeal is frivolous and awarded respondents their attorney fees and costs incurred in defense of appeal. It remanded case to trial court for determination of the fees and costs incurred by defendants in defense of appeal.

Litigation after denial of first petition by U.S. Supreme Court, No. 91-561

Award of attorney fees and costs for defense of appeal

On remand, trial court awarded respondents $8,472.29 as expenses and fees incurred by them for their defense of the appeal, A7, over petitioner's objection that they were unjustified and undocumented under Colo. Rev. Stat. §13-17-103. And that federal law on attorney fees for civil rights claims applies and

respondents had not met its requirements. Petitioner appealed, Case No. 91CA0712.

Respondents fraudulently garnished petitioner's wages to recover costs they did not incur

Petitioner had posted supersedeas bond for stay of trial court judgment which awarded respondents their costs and attorney fees in trial court. Trial court released supersedeas bonds to respondent. They also fraudulently garnished petitioner's wages in the amount of $513.00 plus statutory interest as cost of his deposition when he was never deposed.

They first filed fraudulent affidavit of costs claiming $513.00. A8. After fraudulently obtaining judgment of $33,635.13, A9, which included $513.00, they subscribed to affidavit in writ of continuing garnishment seeking satisfaction of judgment fraudulently obtained. A11. Even after they confessed to the fraud, A10, and the judgment was amended to reduce it by $513.00 to $33,122.13, A10, they subscribed willfully to three more fraudulent affidavits in writs of continuing garnishment that original judgment of $33,635.13 was still valid, to unlawfully get $513.00 plus statutory interest from petitioner. A12, A13, and A14.

Trial court's order directing defendants not to respond to well documented motion to discipline them for their habitual misconducts and violations of law

Petitioner moved trial court to discipline respondents for their misconducts and that they and their counsel used state power to deprive him of property without due process, a willful violation of his V and XIV Amend. rights. Therefore, they are liable under 18 U.S.C. §241 & §242. They are also liable under Colo. Rev. Stat. §18-4-407-7 for theft because it was well over $300 and petitioner is over 60 years old. They are also liable under Colo. Rev. Stat. §18-8-610 for tampering with physical evidence.

Respondents did not respond within 15 days allowed under District Court Practice Standards §1-15. Petitioner moved the court should deem their misconducts confessed, and report them to Colorado Supreme Court, Rule 241.5, district attorney, U.S. attorney and discipline them.

Respondents then filed motion to cite petitioner for contempt because he violated injunction against *pro se* filing and upon finding him guilty of contempt, imprison him for not less than six months and fine him not less than $50,000. They attached a proposed order and citation for this purpose.

Petitioner moved the court to discipline defendants for their further misconduct. He had a constitutional right to inform trial court about violation of laws. *Re Quarles*, 158 U.S. 532 (1895). *Motes v. U.S.* 178 U.S. 358 (1900). Court's duty to report counsel's misconduct is not diminished by any alleged misconduct of petitioner.

Trial court ordered respondents not to respond to petitioner's motions and that petitioner's *pro se* motions will be placed in the file but ignored. A7. Petitioner appealed the order. Case No. 92CA0834.

Colorado Court of Appeals refused to follow intervening ruling of U.S. Supreme Court on federal question

While consolidated case 91CA0712 & 92CA0834 were pending, U.S. Supreme Court in *Hafer v. Melo*, 502 U.S. (1991) overruled *Will*, 491 U.S. 58 (1989) and held:

> State officials sued in their individual capacities are 'persons' within the meaning of 42 U.S.C. §1983.

Petitioner submitted that Court of Appeal should follow *Hafer* and rule that trial court had subject matter jurisdiction over his civil rights claims.

Summary judgment must now be reviewed solely on the basis of the record before trial court at the time it rendered the judgment, since no testimony was taken. *McKinley Constr. Co. v. Dozier*, 487 P.2d (Colo. 1971).

Court of Appeals ruled:

> [Citing intervening] *Hafer* . . . plaintiff raise[s] issues which have been settled. However, under the doctrine of the law of the case, a decision on an issue of law becomes binding precedent to be followed in successive stages of the same litigation. . . . Accordingly, we do not address these issues. A3.

It repeated its earlier falsification of the record that summary judgment is a dismissal:

> [T]rial court *dismissed* plaintiff's surviving claims. . . . The trial court's order was appealed to this court which affirmed . . . the *dismissal* . . . [Emphasis added. Opinion at A1.]

Colorado Court of Appeals denied meaningful oral argument

At the oral argument petitioner requested the court to ask counsel for respondents, John R. Mann, if he had filed fraudulent affidavits and garnished petitioner's wages of $513.00 to falsely recover cost of deposing petitioner when in truth and fact he was never deposed.

The court denied petitioner's request and refused to ask the counsel any question because he had not presented any oral argument and was resting on his written brief to affirm judgment of trial court.

In the written opinion, the court affirmed trial court's order that petitioner's motions filed *pro se*, which documented defendants' habitual misconduct and violations of law, will be placed in the file but ignored and defendants shall not respond to it because he has been enjoined from appearing *pro se*. A3.

REASONS FOR ALLOWANCE OF THE WRIT

I

Colorado Court of Appeals has willfully refused to follow intervening ruling of U.S. Supreme Court on federal question

Without exception, courts have held that intervening decision of U.S. Supreme Court on federal question must be followed notwithstanding any rule or previous decision.

> This . . . being a federal question to be determined by application of federal law. The determination of this court of that question is binding upon the state courts and must be followed, and state law, *decision or rule* to the contrary

notwithstanding. [Emphasis added.] *Chesapeake & O.R. Co. v. Martin*, 283 U.S. 209, 220-221 (1931).

Supreme Courts of various states have held that their former opinion cannot be "the law of the case" when the federal case they followed in declaring the law has been expressly overruled by U.S. Supreme Court in an intervening opinion. E.G.;

> Our former opinion cannot, therefore, be the law of the case, for the reason that the case which we followed in declaring the law has been expressly overruled; and, as this is a federal question, it is our duty to follow the decisions of the Supreme Court of the United States; and in so doing we must now hold that case is removable, notwithstanding our former decision that it was not removable. *American R. Exp. Co. v. Davis*, 250 SW 540, 541, 542 (Ark. 1923).

> If the view of the Supreme Court of the United States is contrary to the view reached upon a former hearing, our duty is to follow its guide, interpreting its decisions in the light of its later holdings, though in doing so we do not abide by the rule of practice embodied in the phrase "the law of the case" and though we reach a different result from that reached on a former appeal. *Sands v. American Ry. Express Co.*, 198 N.W. 402 (Minn. 1924). Affirmed on the merits 69 U.S. 406.

> Plaintiffs seek to rely on the "law of the case" doctrine and res judicata, insisting our 1974 decision in this case . . . was final and irrevocable. . . . It is our duty to apply the latest pronouncements of the United States Supreme Court on Federal Constitutional questions. *Townsend v. Clover Bottom Hospital & Sch.*, 560 S.W. 2d 623, 625-6 (Tenn. 1978).

> An intervening decision by a higher court is one of the exceptional situations in which a court will entertain a request to modify the law of the case. . . . Because we once again have jurisdiction of this case and, therefore,

> the opportunity to change the law of the case, it would be in the interest of justice to conform to *ASARCO, Inc., v. Idaho State Tax Commission*, 458 U.S. 307 (1982). *Brunner Enterprises v. Revenue of the State of Florida*, 452 So. 2d 550, 553 (Fla. 1984).

These authorities were cited by petitioner, but Colorado Court of Appeals refused to consider them.

II

Petitioner has constitutional rights to fully represent himself in proceeding to assess costs against him

Petitioner was in a defensive posture and has the right to appear *pro se* to assert his V and XIV Amend. rights of protection against deprivation of property without due process when respondents had fraudulently garnished his wages to falsely recover cost of deposing him and in truth and fact he was never deposed.

The United States Supreme Court has stated that I Amend. right of access to courts "is the right conservative of all other rights." *Chambers v. Baltimore & Ohio RR*, 207 U.S. 142, 148 (1907); "the right of access to the courts is indeed but one aspect of right of petition." *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972). The court has noted that the right to petition is "among the most precious of the liberties safeguarded by the Bill of Rights, *United Mine Workers v. Illinois State Bar Association*, 389 U.S. 217, 222 (1967) and that it has "a sanctity and a sanction not permitting dubious intrusion," *Thomas v. Collins*, 323 U.S. 516, 530 (1945). As an aspect of the First Amendment right to petition, the right of access to court shares this "preferred place" in our hierarchy of constitution freedoms and values.

> The Founders believed that self-representation was basic right of a free people. *Farretta v. California*, 422 U.S. 806, n39 (1975).

The courts that have limited the court access of *pro se* litigants have not forced litigants to retain a lawyer, but have required them to obtain leave of court before filing a lawsuit. *See*, e.g., *Mayfield v. Collins*, 918 F.2d 560, 562 (5th Cir. 1991); In re *Martin-Trigona* 737 F.2d 1252, 1258-59, 1264 (2d Cir 1984); *Green v. Warden, U.S. Penitentiary*, 699 F.2d 364 (7th Cir.), *cert. denied*, 461 U.S. 960 (1983). *In re Green*, 669 F.2d 779, 787 (D.C. Cir. 1981).

> However, a court cannot impose conditions so burdensome as to deny a litigant meaningful *pro se* access to the court. *Tripati v. Beaman*, 878 F.2d 351, 352 (10th Cir. 1986).

To petitioner's knowledge only one reported federal case has required a *pro se* litigant to hire counsel. *People v. Carter*, 678 F. Supp. 1484, 1491-92 (D. Colo. 1986).

III

Petitioner has constitutional right to inform court about violations of law

U.S. Supreme Court has held that every citizen has the right to inform authorities of violations of laws, and that a conspiracy to interfere with this right is within the conspiracy sections of civil rights statutes. *Re Quarles*, 158 532 (1895). *Motes v. United States*, 178 U.S. 358 (1900).

IV

Law required judges to report the misconduct of defendant's counsel to Colorado Supreme Court and their plainly criminal conduct to proper authorities

Fraudulent proceedings in state court to garnish petitioner's wages violate his XIV Amend. right to due process.

Colo. R. Civ. P. 241.5 states that a judge has the *duty* to report counsel's misconduct to the Colorado Supreme Court. Moreover, Colorado Code of Judicial Conduct, Canon B(3) also imposes this duty on a judge.

Moreover, state judges take oath under Ar. VI §(3) to support federal and state constitutions and laws and they have duty to report violation of criminal law to proper authorities.

> Judge . . . had a duty to notify proper authorities if he felt that a crime was being committed. *Martinez v. Wainer*, 771 F.2d. 424, 435 (CA 10, 1985) vacated on other grounds.

V

Colorado Court of Appeals' internal regulation No. 11 prohibiting oral argument by non-attorney *pro se* litigants violates equal protection and due process provisions of federal constitution

Colorado Court of Appeals had always denied petitioner's motions for oral arguments. Using Colorado Open Records Act he discovered Internal Regulation No. 11. A18.

Petitioner requested Colorado Court of Appeals to ask respondents' counsel if he had repeatedly filed fraudulent affidavits to recover fictitious cost from him. The main issue in 92CA0834. The court refused. Thus, no meaningful argument was held and the court was, in effect, following its Internal Regulation No. 11. In response to petitioner's request, the clerk has informed him that there has been no change in internal regulations of the court as they relate to oral argument by non-attorney *pro se* litigants, namely that no oral argument will be held when either or both parties appear *pro se* and are non-attorneys. A18.

> Appellate courts must exercise Statutory review without discrimination. *National Association of Marine Cooks & Stewards v. Arnold*, 348 U.S. 37 (1954).

CONCLUSION

For these various reasons, the petition should be granted. Respectfully submitted, Mahinder S. Uberoi, *pro se*.

APPENDIX

COLORADO COURT OF APPEALS

NO. 91CA0712 & NO. 92CA0834 May 27, 1993
ORDER AFFIRMED

Mahinder S. Uberoi, Plaintiff-Appellant

v.

University of Colorado, William McInerny, Joe Roy, Gary Arai, John Holloway and Richard Tharp, Defendants-Appellees.

Appeal from the District Court of Boulder County, Honorable Roxanne Bailin, Judge, No. 83CV625. Division I, Opinion by Judge Ney, Pierce and Marquez, JJ., concur.

Plaintiff, Mahinder S. Uberoi, appeals the award of attorney fees incurred by defendants on appeal, as ordered by this court on remand. We affirm.

In 1983, plaintiff brought an action against defendants alleging various common law tort claims and violations of his civil rights. In the subsequent decade, this matter has been considered numerous times by the trial court, by our court, by our supreme court, and by the United States Supreme Court. At all times, as here, plaintiff has appeared *pro se*.

In the pertinent segment of the history of this case, the trial court dismissed plaintiff's surviving claims and entered judgment for attorney fees on the basis that the claims asserted were frivolous and groundless. The trial court's order was appealed to this court, which affirmed both the dismissal and the award. In addition, the cause was remanded for an award of attorney fees incurred by defendants as a result of the frivolous appeal. *Uberoi v. University of Colorado* (Colo. App. 88CA0714, Dec. 7, 1989) (not selected for official publication).

I.

Plaintiff contends that the trial court erred in its award of unjustified and unreasonable attorney fees. We disagree.

Plaintiff argues that the award of attorney fees reflects costs and fees attributable to an appeal handled by counsel other than the appeal at issue here, that much of the work performed by counsel was unnecessary, and that the amounts charged to him are more than fees actually charged to the client. Plaintiff further argues that defendants have not adequately and properly documented their fees and costs and that the trial court's award "does not show use of any criteria nor any reasoned opinion." We are not persuaded.

The determination of the reasonableness and amount of attorney fees to be awarded is a question of fact for the trial court. *Hartman v. Freedman*, 197 Colo. 275, 591 P.2d 1318 (1979). Such factual findings will not be disturbed upon appeal unless clearly erroneous and not supported by the record. *Wright Farms, Inc. v. Weninger*, 669 P.2d 1054 (Colo. App. 1983).

Here, the record reveals extensive documentation of fees and costs by defendants' counsel and the careful exclusion by him of charges not specifically attributable to this matter. Furthermore, defendants' expert witness verified that he had checked the entire appellate file in this cause and had not found one entry of the affidavit for attorney fees which did not correspond with that file.

The record, likewise, does not support the contention of plaintiff that, in light of a decision announced during the pendency of his appeal, work performed by defendants' counsel was unnecessary. *Will v. Michigan Department of State Police*, 491 U.S. 58, 109 S.Ct.2304, 105 L.Ed.2d 45 (1989), confirmed the trial court's ruling of summary judgment; it did not stop the progress of plaintiff's appeal. Therefore, action by defendants was still required in the absence of plaintiff's withdrawal.

We find inaccurate plaintiff's assertion that the trial court's award is not based upon specific criteria or a reasoned opinion. On the contrary, the trial court, as reflected in its order, based its award on the hourly rates customarily charged in the area, the time and labor appropriate for the issues and that the actions taken were consistent therewith, the difficulty of the issues, and the results obtained.

In addition to offering evidence relevant to the specific criteria above, defendants' expert testified that more work is often required when opposing a *pro se* litigant because numerous and unnecessary motions are often filed and because it is difficult to determine the issues presented.

It was defendants' expert's opinion that the fees charged were fair and reasonable. In contrast, plaintiff did not call his own expert and was unable to show that the amounts charged and the work performed were inappropriate.

Finally, we decline to limit the award of attorney fees based on a private fee arrangement between client and counsel. Fee awards are to be calculated at prevailing market rates in the community regardless of actual cost to the client. *See Blum v. Stenson*, 465 U.S. 886, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984). Moreover, when attorney fees are awarded as sanctions, they should have a deterrent effect on abuses of the legal process. *See In re Marriage of Joseph*, 44 Colo. App. 128, 613 P.2d 344 (1980).

Accordingly, because we conclude that the trial court's findings as to the reasonableness and necessity of fees incurred are supported by the record, the award will not be disturbed.

II.

Plaintiff asserts that the trial court erred in its denial of his motions regarding misconduct by defendants. Again, we do not agree.

Plaintiff has been permanently enjoined in this action from any *pro se* appearance which is not related to post-judgment collection proceedings. *See Uberoi v. University of Colorado*, supra.

Because these motions did not come within the permitted exception to the order prohibiting him from filing *pro se* pleadings, they were properly denied or disregarded.

III.

In reliance upon *Hafer v. Melo*, ___ U.S. ___, 112 S.Ct. 358, 116 L.Ed.2d 301 (1991), which was decided subsequent to the exhaustion of his previous appeals, plaintiff also attempts to raise issues which have been settled. However, under the doctrine of the law of the case, a decision on an issue of law made at one

stage of the case becomes binding precedent to be followed in successive stages of the same litigation. *People v. Gurule*, 699 P.2d i (Colo. App. 1984). Accordingly, we do not address these issues.

Finally, because plaintiff has presented no rational argument based on evidence or law, we conclude that this appeal is also frivolous. *Mission Denver Co. v. Pierson*, 674 P.2d 363 (Colo. 1984). Consequently, an award of attorney fees to defendants would be appropriate under C.A.R. 38(d). However, defendants, in an effort to bring this matter to an end, have requested that attorney fees not be awarded to them. We comply with this request.

We decline to comply with defendants' further request that plaintiff be permanently enjoined from any further *pro se* appearances before this court.

Order affirmed.

JUDGE PIERCE and JUDGE MARQUEZ concur.

COLORADO COURT OF APPEALS

Case NO. 91CA0712 and NO. 92CA0834 ORDER

MAHINDER S. UBEROI v. UNIVERSITY OF COLORADO ET AL.

Upon consideration of the Petition for Rehearing filed by the Appellant herein, the Petition is hereby DENIED. It is ordered that issuance of the Mandate is stayed to and including August 09, 1993 provided that if a Petition for Writ of Certiorari is timely filed with the Supreme Court of the State of Colorado, the stay shall remain in effect until disposition of the cause by the Supreme Court.

BY THE COURT: Ney, J., Pierce, J., Marquez, J. DATED July 08, 1993.

SUPREME COURT, STATE OF COLORADO

Case No. 93SC496 Certiorari to the Colorado Court of Appeals, 91CA0712 & 92CA0834 Boulder District Court, 83CV625

Order of Court

MAHINDER S. UBEROI, Petitioner

v.

UNIVERSITY OF COLORADO, WILLIAM McINERNY, JOE ROY, GARY ARAI, JOHN HOLLOWAY AND RICHARD THARP, Respondents.

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals, and after review of the record, the briefs, and the judgment of said Court of Appeals,

IT IS THIS DAY ORDERED that said Petition for Writ of Certiorari shall be, and same hereby is, DENIED.

BY THE COURT, EN BANC, December 27, 1993.

DISTRICT COURT, BOULDER COUNTY, COLORADO

Case No. 83CV625

Order: Attorneys Fees on Remand from Court of Appeals

MAHINDER UBEROI, Plaintiff,

v.

UNIVERSITY OF COLORADO, ET AL., Defendants.

This matter came before the Court on February 12, 1991. The Plaintiff was present, *pro se*; the University was present by John R. Mann.

The Court heard testimony from a lawyer who is an expert in appellate work. He testified that he had checked the entire appellate file in this case and had not found one entry on the affidavit for attorneys fees which did not correspond to the appellate file in this case. He also testified that the hourly rates charged were at or below those customarily charged by insurance defense firms in the Denver-Boulder area. He testified that the actions taken were consistent with time and labor appropriate for the issues, for the difficulty of the issues, and for the results obtained. He also testified that the briefs demonstrated a high level of skill.

He further testified that more work is often required when opposing a *pro se* litigant because of the number of unnecessary motions and because of the difficulty in determining the issues presented. Overall, his opinion was that the fees charged were fair and reasonable.

The issues presented by Mr. Uberoi appear to be as follows:

1. The amounts charged to him are more than the fees actually charged to the client.

2. There is such confusion between two appeals currently handled by counsel for the defendant that a clear determination cannot be made of the amounts properly charged to this case.

3. A case decided while this case was pending obviated the necessity for much of the work done by defense counsel.

As to issue one, this Court must decide what fees are fair and reasonable regardless of the fees actually charged to the client. Even if Cooper and Kelly had charged the University (or, in fact, its insurance company) nothing, it would still be entitled to fair and reasonable fees.

As to issue two, this Court is convinced by a preponderance that especial care was taken by Cooper and Kelly to remove any hours expended for the other appeal. Mr. Mann described his procedure which included excluding anything questionable. In addition, Mr. Epstein, the expert called by the defense, testified that nothing appeared on the affidavit which did not appear in the file in *this* case.

As to issue three, *Will v. Michigan Department of State Police*, U.S. 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989) was decided while this appeal was pending. *Will* confirmed this Court's original summary judgment ruling. It did not obviate the necessity of the

work done on this appeal. If anything, it made the Court of Appeals' decision to find the appeal frivolous easier. Only if the Plaintiff had dismissed his appeal would the University have had any safety in ceasing action.

The Plaintiff did not call his own expert, and was unable to show that the amounts charged and the work done was inappropriate.

Accordingly, the Court finds that attorneys fees in the amount of $7,702.00 plus costs of $770.29 are fair, reasonable, and necessary and shall be awarded to the Defendants. Judgment is hereby entered in that amount.

BY THE COURT, Roxanne Bailin, District Judge. DATED February 25, 1991.

DISTRICT COURT, BOULDER COUNTY, COLORADO

Case NO. 83 CV 625-5

Order

MAHINDER S. UBEROI, Plaintiff,

v.

UNIVERSITY OF COLORADO BOARD OF REGENTS, ET AL., Defendants.

On November 21, 1991, Mahinder Uberoi filed a "Motion to enter Defendants' Confession of their Offenses." On December 10, 1991, Mahinder Uberoi filed a "Motion for Additional Sanctions Against Defendants and Response to Verified Motion for Contempt Citation." On November 25, 1991, the Defendants had filed a Motion for Contempt Citation on the basis that the Plaintiff had filed *pro se* motions in violation of this Court's order of December 27, 1988.

All motions filed by the Plaintiff without the assistance of counsel will be placed in the file but ignored. The Defendants are ordered not to respond to any such motions or to expend any attorneys fees in acting upon the motions. The Court will not set

the motion for contempt because it will begin another round of argument and requests for attorneys fees. The Defendants may have ben unsure whether to respond in some way to the Plaintiff's motions and, therefore, filed the motion for contempt. This order should resolve any concerns in that regard if the Plaintiff files any additional motions in the future.
BY THE COURT, R. Bailin, District Judge. DATED January 29, 1991.

DISTRICT COURT, BOULDER COUNTY, COLORADO

Affidavit of Attorneys Fees

MAHINDER S. UBEROI, Plaintiff

v.

UNIVERSITY OF COLORADO BOARD OF REGENTS; WILLIAM McINERNY; JOE ROY; GARY ARAI; JOHN HOLLOWAY; AND RICHARD THARP, Defendants.

The affiant, Elizabeth H. McCann, of the law firm of COOPER & KELLEY, P.C., states that to the best of her knowledge and information, the following is a compilation of attorneys' fees and costs incurred by COOPER & KELLEY, P.C. in defense of the University of Colorado Board of Regents, William McInerny, Joe Roy, Gary Arai, John Holloway, and Richard Tharp in the above-referenced action.

* * *

TOTAL HOURS: 377
TOTAL [ATTORNEY] FEES: $29,042.90

* * *

2/18/87 $513.00 Plaintiff's deposition.

* * *

TOTAL COSTS: $4,592.23
TOTAL [ATTORNEY FEES AND] COSTS: $33,635.13
Further, affiant sayeth naught.

COOPER & KELLEY, P.C. By (Signed) Elizabeth H. McCann, #5834, 1660 Wynkoop Street, Suite 900, Denver, Colorado 80202 (303) 825-2700

STATE OF COLORADO, CITY AND COUNTY OF DENVER

Subscribed and sworn to before me this 5th day of April, 1988 by Elizabeth H. McCann.

Witness my hand and official seal. My commission expires 4/13/89. Corina Carter, Notary Public.

DISTRICT COURT, BOULDER COUNTY, COLORADO

Case NO. 83-CV-625, Division 5

Order

MAHINDER S. UBEROI, Plaintiff,

v.

UNIVERSITY OF COLORADO BOARD OF REGENTS; WILLIAM McINERNY; JOE ROY; GARY ARAI; JOHN HOLLOWAY; and RICHARD THARP, Defendants.

* * *

The Court orders that Plaintiff pay to Defendants attorneys fees in the amount of $29,042.90 and costs in the amount of $4,592.23. [Total $33,635.13]

Dated this 20th day of April, 1988.

BY THE COURT, Roxanne Bailin, Boulder District Court Judge.

DISTRICT COURT, BOULDER COUNTY, COLORADO

Civil Action No. 83CV625, Division 5

Defendants' Responses to Plaintiff's Post-Judgment Motions

MAHINDER S. UBEROI, Plaintiff,

v.

UNIVERSITY OF COLORADO BOARD OF REGENTS; WILLIAM McINERNY; JOE ROY; GARY ARAI; JOHN HOLLOWAY; and RICHARD THARP, Defendants.

* * *

Defendants confess that inclusion of the cost of the February 18, 1987 deposition was error, which occurred through an accounting oversight. Accordingly, defendants request that the Court amend the judgment and have enclosed an appropriate Order.

Respectfully submitted, COOPER & KELLEY, P.C., by Elizabeth H. McCann, #5834, John R. Mann, #16088, Attorneys for Defendants, 1660 Wynkoop St., #900, Denver, CO 80202; (303) 825-2700.

DISTRICT COURT, BOULDER COUNTY, COLORADO

Civil Action No. 83CV625, Division 5

Amended Judgment

MAHINDER S. UBEROI, Plaintiff,

v.

UNIVERSITY OF COLORADO BOARD OF REGENTS; WILLIAM McINERNY; JOE ROY; GARY ARAI; JOHN HOLLOWAY; and RICHARD THARP, Defendants.

IT IS HEREBY ORDERED that the Order of April 20, 1988, is amended at page 8 to read as follows:

* * *

The Court orders that plaintiff pay to defendants attorneys' fees in the amount of $29,042.90 and costs in the amount of $4,079.23. [Total $33,122.13]

Dated this 31st day of May, 1988.

BY THE COURT, Roxanne Bailin, District Court Judge.

(C.R.C.P. No. 39)

DISTRICT COURT, BOULDER COUNTY, STATE OF COLORADO

Case No. 83-CV-625 Div./Ct. Rm.

RECEIVED
1988 MAY -5 AM 8 22

WRIT OF CONTINUING GARNISHMENT

MAY 12 1988
OFFICE OF DIRECTOR
HUMAN RESOURCES
UNIVERSITY OF COLORADO

Mahinder S. Uberoi,
Plaintiff(s)
vs.
University of Colorado Board of Regents; William McInerny; Joe Roy; Gary Arai; John Holloway; and Richard Tharp,
Defendant(s)

Judgment Debtor's name, last known address, other identifying information: Mahinder S. Uberoi
819 Sixth St., Boulder, Co 80302

1. Original Amount of Judgment Entered 4/20/88 $ 33,635.13
2. Plus any Interest Due on Judgment (____ % per annum) + $ ____
3. Taxable Costs (including estimated cost of service of this Writ) + $ 100.00
4. Less any Amount Paid - $ .00
5. Principal Balance/Total Amount Due and Owing = $ 33,735.13

I affirm that I am authorized to act for the Judgment Creditor and that this is a true and correct statement as of 4/25/88

Subscribed under oath before me on 4/25/88

Notary Public or Deputy Clerk

My Commission Expires: 7/12/89

Elizabeth H. McCann, #5894
John R. Mann, #16088
Cooper & Kelley, P.C.
1660 Wynkoop St., #900
Denver, CO 80202
(303) 825-2700

WRIT OF CONTINUING GARNISHMENT

THE PEOPLE OF THE STATE OF COLORADO to the Sheriff of any Colorado County, or to any other person over the age of 18 years who is not a party to this action.

You are directed to serve TWO COPIES of this Writ of Continuing Garnishment upon the University of Colorado at Boulder, Garnishee, with proper return of service to be made to the Court.

TO THE GARNISHEE:
YOU ARE HEREBY SUMMONED AS GARNISHEE IN THIS ACTION AND ORDERED:

a. To answer the following questions under oath and to file your answers with the Clerk of the Court no less than 5 nor more than 10 days following the time you pay the Judgment Debtor for the first time following service of this Writ of Continuing Garnishment, or 40 days following service of this Writ upon you, whichever is less. YOUR FAILURE TO ANSWER THIS WRIT OF CONTINUING GARNISHMENT WILL RESULT IN THE ENTRY OF A DEFAULT AGAINST YOU.
b. To pay any nonexempt earnings to the Clerk of the Court no less than 5 nor more than 10 days following each time you pay the Judgment Debtor (employee) during the effective period of this Writ and attach a copy of the Calculation of the Amount of Exempt Earnings used (the calculation under "Questions to be Answered by Garnishee" should be used for the first pay period, and one of the multiple calculation forms included with this Writ should be used for all subsequent pay periods).
c. To deliver a copy of this Writ of Continuing Garnishment, together with the Calculation of the Amount of Exempt Earnings, at the first time you pay the Judgment Debtor (employee).
d. To deliver a copy of each subsequent Calculation of the Amount of Exempt Earnings each time you pay the Judgment Debtor (employee) for the remainder of the effective period.
e. MAKE CHECKS PAYABLE AND MAIL TO THE CLERK OF THE DISTRICT COURT AT BOULDER COLORADO. PLEASE PUT THE CASE NUMBER (shown above) ON THE CHECK.

CLERK OF THE COURT
PATRICIA PATTERMAN
(SEE REVERSE SIDE)

CLERK OF THE DISTRICT COURT
COUNTY COURTS BUILDING
P.O. BOX 471
1035 13TH STREET
BOULDER, CO 80306

BY Sandra Kennedy
DATE 5/5/88

BOULDER COUNTY DISTRICT COURT COLORADO

BEST AVAILABLE COPY

(C.R.C.P. No. 28)

DISTRICT COURT, BOULDER COUNTY, STATE OF COLORADO

Case No. 81-CV-625, Div. Ct. Rm. 5

RECEIVED
SEP 0 6 1988
OFFICE OF DIRECTOR
HUMAN RESOURCES
UNIVERSITY OF COLORADO

WRIT OF CONTINUING GARNISHMENT

Mahinder S. Uberoi,
Plaintiff(s)
vs.
University of Colorado Board of Regents; William McInerny; Joe Roy; Gary Arai; John Holloway; and Richard Tharp,
Defendant(s)

Judgment Debtor's name, last known address, other identifying information: Mahinder S. Uberoi
819 Sixth St., Boulder, CO 80302

1. Original Amount of Judgment Entered 4/20/88 (date) $ 33,635.13
2. Plus any Interest Due on Judgment (____ % per annum) + $ ____
3. Taxable Costs (including estimated cost of service of this Writ) + $ 50.00
4. Less any Amount Paid - $ 778.71
5. Principal Balance/Total Amount Due and Owing = $ 32,906.42

I affirm that I am authorized to act for the Judgment Creditor and that this is a true and correct statement as of 8/29/88 (date)

Subscribed under oath before me on ____

Notary Public or Deputy Clerk

My Commission Expires: ____

Elizabeth H. McCann, #9034
John R. Mann, #16088
Cooper & Kelley, P.C.
1660 Wynkoop St., #900
Denver, CO 80202
(303) 825-2700

WRIT OF CONTINUING GARNISHMENT

THE PEOPLE OF THE STATE OF COLORADO to the Sheriff of any Colorado County, or to any other person over the age of 18 years who is not a party to this action.

You are directed to serve TWO COPIES of this Writ of Continuing Garnishment upon the University of Colorado at Boulder, Garnishee, with proper means of service to be made to the Court.

TO THE GARNISHEE:
YOU ARE HEREBY SUMMONED AS GARNISHEE IN THIS ACTION AND ORDERED:

a. To answer the following questions under oath and to file your answers with the Clerk of the Court no less than 5 nor more than 10 days following the time you pay the Judgment Debtor for the first time following service of this Writ of Continuing Garnishment, or 40 days following service of this Writ upon you, whichever is less. YOUR FAILURE TO ANSWER THIS WRIT OF CONTINUING GARNISHMENT WILL RESULT IN THE ENTRY OF A DEFAULT AGAINST YOU.
b. To pay any nonexempt earnings to the Clerk of the Court no less than 5 nor more than 10 days following each time you pay the Judgment Debtor (employee) during the effective period of this Writ and attach a copy of the Calculation of the Amount of Exempt Earnings used (the calculations under "Questions to be Answered by Garnishee" should be used for the first pay period, and one of the multiple calculation forms included with this Writ should be used for all subsequent pay periods).
c. To deliver a copy of this Writ of Continuing Garnishment, together with the Calculation of the Amount of Exempt Earnings, at the first time you pay the Judgment Debtor (employee).
d. To deliver a copy of each subsequent Calculation of the Amount of Exempt Earnings each time you pay the Judgment Debtor (employee) for the remainder of the effective period.
e. MAKE CHECKS PAYABLE AND MAIL TO THE CLERK OF THE ____ COURT AT ____. PLEASE PUT THE CASE NUMBER (shown above) ON THE CHECK.

CLERK OF THE COURT
PATRICIA PATTERMAN
(SEE REVERSE SIDE)

CLERK OF THE DISTRICT COURT
CIVIL COURTS BUILDING
P.O. BOX 471
2035 14TH STREET
BOULDER, CO 80306

BY: Sandra E. Kennedy
Deputy Clerk

DATE: 9-2-88

BOULDER COUNTY DISTRICT COURT COLORADO

BEST A

C R C P No. 39

DISTRICT COURT, BOULDER COUNTY, STATE OF COLORADO
Case No. 89-CV-625, Div./Ct. Rm. E

WRIT OF GARNISHMENT WITH NOTICE OF EXEMPTION AND PENDING LEVY

Mahinder S. Uberoi
Plaintiff(s)
vs.
University of Colorado Board of Regents; William McInerny; Joe Roy; Gary Arai; John Holloway; and Richard Tharp,
Defendant(s)

Judgment Debtor's name, last known address, other identifying information: Mahinder S. Uberoi, 819 Sixth Street, Boulder, CO 80302

1. Original Amount of Judgment Entered 4/20/88		$ 11,635.11
2. Plus any Interest Due on Judgment (9 % per annum)	+	$ 7,280.25
3. Taxable Costs (including estimated cost of service of this Writ)	+	$ 50.00
4. Less any Amount Paid	-	$ 2,322.21
5. Principal Balance/Total Amount Due and Owing	=	$ 16,643.17

I affirm that I am authorized to act for the Judgment Creditor and this is a correct statement as of 11/20/90

Subscribed under oath before me on Nov. 20, 1990

[signature]

NOTARY PUBLIC STATE OF COLORADO

11/1/93

University of Colorado
(Print Judgment Creditor's Name)

Address: Boulder, CO 80309

By: [signature]
(Signature, Type Name, Title, Address and Phone)

John R. Mann, #16088
COOPER & KELLEY, P.C.
1660 Wynkoop St., #900
Denver, CO 80202-1197
Telephone: (303) 825-3700

WRIT OF GARNISHMENT WITH NOTICE OF EXEMPTION AND PENDING LEVY

THE PEOPLE OF THE STATE OF COLORADO to the Sheriff of any Colorado County, or to any person over the age of 18 years who is not a party to this action:

You are directed to serve a copy of this Writ of Garnishment upon Clerk of the District Court, Boulder County District Court, Garnishee, with proper returns of service to be made to the Court.

TO THE GARNISHEE:
YOU ARE HEREBY SUMMONED AS GARNISHEE IN THIS ACTION AND ORDERED:

a. To answer the following questions under oath and file your answers with the Clerk of the Court (AND to mail a completed copy with your answers to the Judgment Creditor or attorney when a stamped envelope is attached) within 10 days following service of this Writ upon you. **YOUR FAILURE TO ANSWER THIS WRIT WITH NOTICE MAY RESULT IN THE ENTRY OF A DEFAULT AGAINST YOU.**

b. To hold pending court order any personal property (other than earnings) owed to or owned by the Judgment Debtor and in your possession or control on the date and time this Writ was served upon you.

YOU ARE NOTIFIED:

a. This Writ with Notice applies to all personal property (other than earnings) owed to or owned by the Judgment Debtor and in your possession or control as of the date and time this Writ was served upon you.

b. In no case may you withhold any personal property greater than the amount on Line 5 on the front of this Writ unless the personal property is incapable of being divided.

c. If you are ordered to pay funds to the Court, tender your check for the amount ordered PAYABLE TO THE CLERK OF THE District COURT AT P.O. Box 4249, Boulder, CO 80306, CO

CLERK OF THE COURT

By: _____
Deputy Clerk

(See Reverse Side)

Date: _____

VAILABLE COPY

C R C P No 26

DISTRICT COURT, BOULDER COUNTY STATE OF COLORADO
Case No 91-CV-625 Div /C: Rm 5

WRIT OF CONTINUING GARNISHMENT

RECEIVE
MAR 0 6 1991
OFFICE OF DIRECTOR
HUMAN RESOURCES
UNIVERSITY OF COLORADO

MAHINDER S. UBEROI,
Plaintiff(s)
vs
UNIVERSITY OF COLORADO BOARD OF REGENTS et al.,
Defendant(s)

Judgment Debtor's name, last known address, other identifying information: Mahinder S. Uberoi, 919 Sixth Street, Boulder, CO 80203

1 Original Amount of Judgment Entered 4/20/88		$ 33,615.13
2 Plus any Interest Due on Judgment (9 % per annum) (date)	+	$ 8,054.29
3 Taxable Costs (including estimated cost of service of this Writ)	+	$ 10.00
4 Less any Amount Paid	-	$ 40,256.91
5 Principal Balance/Total Amount Due and Owing	=	$ 1,462.51

I affirm that I am authorized to act for the Judgment Creditor and this is a correct statement as of 2/22/91 (date)

Subscribed under oath before me on Feb. 28, 1991

Leonard Brown
Notary Public

LEONARD BROWN NOTARY PUBLIC STATE OF COLORADO

11/1/93

University of Colorado
(Print Judgment Creditor's Name)

Address: Boulder, CO 80309

By: [signature]
Signature's Type Name, Title, Address & Phone

John R. Mann, #16088
COOPER & KELLEY, P.C.
1660 Wynkoop St., #900
Denver, CO 80202 [illegible]
Attorney for Judgment Creditor

WRIT OF CONTINUING GARNISHMENT

THE PEOPLE OF THE STATE OF COLORADO to the Sheriff of any Colorado County, or to any person over the age of 18 years who is not a party to this action:

You are directed to serve TWO COPIES of this Writ of Continuing Garnishment upon University of Colorado at Boulder. Garnishee, with proper return of service to be made to the Court.

TO THE GARNISHEE:
YOU ARE HEREBY SUMMONED AS GARNISHEE IN THIS ACTION AND ORDERED:

a. To answer the following questions under oath and file your answers with the Clerk of the Court (AND to mail a completed copy with your answers to the Judgment Creditor or attorney when a stamped envelope is enclosed) no less than 5 nor more than 10 days following the time you pay the Judgment Debtor for the first time following service of this Writ, or 40 days following service of this Writ upon you, whichever is less. YOUR FAILURE TO ANSWER THIS WRIT OF CONTINUING GARNISHMENT MAY RESULT IN THE ENTRY OF A DEFAULT AGAINST YOU.

b. To pay any nonexempt earnings to the Clerk of the Court no less than 5 nor more than 10 days following each time you pay the Judgment Debtor during the effective period of this Writ and attach a copy of the Calculation of the Amount of Exempt Earnings used (the Calculation under "Questions to be Answered by Garnishee" should be used for the first pay period, and one of the multiple Calculation forms included with this Writ should be used for all subsequent pay periods).

c. To deliver a copy of this Writ, together with the Calculations of the Amount of Exempt Earnings and a blank Objection to Calculation of the Amount of Exempt Earnings form, the first time you pay the Judgment Debtor.

d. To deliver to the Judgment Debtor a copy of each subsequent Calculation of the Amount of Exempt Earnings each time you pay the Judgment Debtor for earnings subject to this Writ.

e. MAKE CHECKS PAYABLE AND MAIL TO THE CLERK OF THE District COURT AT Boulder, CO

PLEASE PUT THE CASE NUMBER (shown above) ON THE FRONT OF THE CHECK

OFFICIAL SEAL
JILL CIRI
NOTARY PUBLIC
STATE OF COLORADO

CLERK OF THE COURT Boulder District Court
P.O. Box 4249
Boulder, CO 80306-4249

By: DEPUTY CLERK

Date: 3-1-91

(See Reverse Side)

BEST AVAILABLE COPY

COLORADO COURT OF APPEALS

Case No. 88CA0714

MAHINDER S. UBEROI, Plaintiff-Appellant,

v.

UNIVERSITY OF COLORADO, a State Institution, WILLIAM McINERNY, JOE ROY, GARY ARAI, JOHN HOLLOWAY and RICHARD THARP, Defendants-Appellees.

Appeal from the District Court of Boulder County,
No. 83CV625, Honorable Roxanne Bailin, Judge
Division II, Opinion by Judge Fischbach,
Smith and Tursi, JJ., concur

This is an appeal by plaintiff, Mahinder S. Uberoi, from a summary judgment entered against him and in favor of defendants, University of Colorado and certain of its employees, on plaintiff's complaint alleging numerous violations of 42 U.S.C. §1983 (1982). We affirm.

This is the second appeal in this case. Plaintiff's original complaint was dismissed by the trial court because of, among other grounds, a lack of subject matter jurisdiction against defendants under 42 U.S.C. §1983. On appeal, our supreme court held that the state was a "person" and, therefore, was subject to suit under that statute; accordingly, the claims here at issue were reinstated. *See Uberoi v. University of Colorado*, 686 P.2d 785 (Colo. 1984).

On remand, the trial court, on different grounds, again dismissed the complaint, enjoined plaintiff from appearing before it *pro se* in this case, imposed attorney fees pursuant to §13-17-101, C.R.S. (1987 Repl. Vol. 6A), and fined plaintiff for contempt. Plaintiff does not appeal the injunction entered, but appeals, on eighteen grounds, the remaining orders of the trial court.

I.

While this appeal was pending, the United States Supreme Court ruled, in *Will v. Michigan Department of State Police*, __ U.S. ____, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989), that states, governmental entities that are "arms of the state," and state officials acting in their official capacity are not "persons" within the meaning of 42 U.S.C. §1983. In so ruling, the Court overruled our supreme court's determination to the contrary in *Uberoi v. University of Colorado, supra*.

This holding, in essence, validated the trial court's original conclusion that subject matter jurisdiction was lacking. Therefore, we agree with defendants that plaintiff's remaining claims are barred. Accordingly, although the trial court provided different reasons for its second dismissal of the complaint, we affirm the dismissal on the ground that it lacked subject matter jurisdiction. *See Colorado v. Franc*, 165 Colo. 69, 437 P.2d 48, *cert. denied*, 392 U.S. 928, 88 S.Ct. 2284, 20 L.Ed.2d 1385 (1986).

II.

Plaintiff also disputes the award of attorney fees entered against him pursuant to §13-17-101, et seq., C.R.S. (1987 Repl. Vol. 6A).

He first contends that, since the trial court did not award attorney fees in its initial dismissal of his action, it lacked jurisdiction to enter any subsequent award of fees. We disagree.

Contrary to plaintiff's contention, the determination of the trial court not to award attorney fees pursuant to 42 U.S.C. §1988 in its initial judgment does not preclude an award under §13-17-101, et seq., C.R.S. (1987 Repl. Vol. 6A). Attorney fees for frivolous and groundless actions under §13-17-101 are applicable to "any civil action of any nature." Moreover, the fact that the case was on appeal did not deprive the trial court of jurisdiction to award fees. *Baldwin v. Bright Mortgage Co.*, 757 P.2d 1072 (Colo. 1988).

We also disagree with plaintiff that this award of attorney fees was "unauthorized, excessive and undocumented." The record demonstrates that the trial court properly considered the statutory criteria, and its detailed findings concerning the plaintiff's vexatious conduct and lack of substantial justification for the action are amply supported by the record. *Ault Aerial Applicators, Inc. v. Irvine*, 684 P.2d 949 (Colo. App. 1984).

III.

After the entry of judgment against plaintiff for attorney fees pursuant to §13-17-101, defendants served interrogatories upon plaintiff pursuant to C.R.C.P. 69(d). However, plaintiff did not answer them, and, after hearing, the trial court found him in contempt pursuant to C.R.C.P. 69(d)(2) and C.R.C.P. 107(d) and assessed additional attorney fees. We reject plaintiff's assertion that the contempt order and the resultant award of fees were in error.

The record does not support plaintiff's allegation that he had no notice of the contempt proceeding. We also disagree with plaintiff that the trial court's order enjoining him from appearing as his own attorney prevented him from filing answers to the interrogatories. C.R.C.P. 69(d)(2) specifically allows a judgment debtor to file such answers without an attorney. Moreover, the record reveals that plaintiff was fully aware of that.

Finally, contrary to plaintiff's argument, the award of additional attorney fees pursuant to C.R.C.P. 69(d)(2) and C.R.C.P. 107(d) is supported by the record. Therefore, we affirm the award. *See In re Marriage of Bernardoni*, 731 P.2d 146 (Colo. App. 1986).

We have examined plaintiff's numerous other contentions and find them to be totally without merit.

IV.

Based upon the briefs and record in this case, we conclude that the manner in which this appeal has been prosecuted has been vexatious. Moreover, this appeal is replete with arguments that have no support in law or facts, which plaintiff reasonably should have known. Therefore, we award to defendants their legal fees and expenses incurred in the defense of this appeal. *See Mission Denver Co. v. Pierson*, 674 P.2d 363 (Colo. 1984).

The judgment is affirmed, and the cause is remanded to the trial court for a determination of the amount of attorney fees and costs incurred by defendants in connection with this appeal to be entered as part of the judgment against plaintiff.

JUDGE SMITH and JUDGE TURSI concur.

COURT OF APPEALS, STATE OF COLORADO
2 East Fourteenth Avenue, Denver, CO 80203

April 19, 1993
Mahinder S. Uberoi, 819 Sixth Street, Boulder, CO 80302
Dear Mr. Uberoi:
I have received your letter dated April 10, 1993. This is to advise you that there are no changes to the internal regulations of the court as they relate to oral argument by non-attorney pro se litigants.
Sincerely, James G. Benway, Clerk of the Court

Internal Regulation No. 11

ORAL ARGUMENT
EX PARTE AND PRO SE, OUT-OF-STATE ATTORNEYS

There will be no oral arguments in ex parte cases, nor in cases in which either or both parties appear pro se and are non-lawyers. In such cases, the case will be ordered submitted on the briefs. A pro se attorney may argue a case, if there is an attorney on the other side as counsel or pro se.

A corporation must be represented by an attorney. House counsel, an officer, director, or stockholder of the corporation may represent the corporation and argue the case, only if such person is an attorney admitted to practice in Colorado.

In all situations referred to in these internal regulations, the term "attorney" or "lawyer" means an attorney who is licensed to practice in Colorado. Attorneys who are not licensed to practice in Colorado, but are licensed, and in good standing elsewhere may practice in the Court of Appeals only by special permission, pursuant to C.R.C.P. 22.1.